
From: Carlin, Jayne
To: Wu, Jennifer
Sent: 6/13/2014 12:53:53 PM
Subject: FW: Revised OREGON CZARA PROGRAM RESPONSE TO NWEA'S PESTICIDE PETITION
Attachments: Excerpt from CSO Response Interim Approvals.doc

Found the following in the FOIA database and thought it might be helpful to you.

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<http://www.epa.gov/r10earth/tmdl.htm>

From: Powers, David
Sent: Thursday, May 30, 2013 10:36 AM
To: Powers, David; Henning, Alan
Subject: FW: Revised OREGON CZARA PROGRAM RESPONSE TO NWEA'S PESTICIDE PETITION

Alan - not sure I copied you on the e-mail below regarding pesticides. Allison provides some good history. As I mentioned on the phone this a.m. the pesticide condition had been "mooted" by court required buffers around streams pending EPA ESA consultation on registration/label requirements for xx pesticides/herbicides. When the consultation is completed the court directed buffers go away. Since ESA consultation, and I believe the independent national study EPA/NOAA fisheries asked for to resolve differences in opinion on effects, calls for additional label requirements for chemical application EPA is in a strange position asking the State for additional MMs for chemical applications...I believe EPA HQ asked the chemical companies to add some label requirements and the companies declined. This may be an OR CZARA issue that is appropriately in EPA's court, not the States.

p.s. EPA and NOAA HQ share our concerns about R10's approach.

From: David Powers [Powers.David@epamail.epa.gov]
Sent: Thursday, May 02, 2013 12:17 PM
To: Powers, David
Subject: Fw: Revised OREGON CZARA PROGRAM RESPONSE TO NWEA'S PESTICIDE PETITION

pesticides

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----- Forwarded by David Powers/R10/USEPA/US on 05/02/2013 12:16 PM -----

From: Allison Castellan <allison.castellan@noaa.gov>
To: David Powers/R10/USEPA/US@EPA
Cc: Don Wayne/DC/USEPA/US@EPA, Jennifer Wu/R10/USEPA/US@EPA, Jayne Carlin/R10/USEPA/US@EPA
Date: 09/19/2012 06:51 AM
Subject: Re: Fw: Revised OREGON CZARA PROGRAM RESPONSE TO NWEA'S PESTICIDE PETITION

Dave--

To respond to Gene's questions:

1) Yes, OR has interim approval for pesticides for forestry but we relied on the court ordered injunction for that. With the injunction expiring next summer, it can no longer be used to meet the condition so we'll need to work with the state to find another way to address. Gene should remember that that "interim approvals" are just that--interim. They are not "final" until they've gone out for public comment. If the status of a program/rule/court injunction etc OR uses to meet a condition changes between the time we give interim approval and when we announce in the FR our intent to fully approve the program we need to make sure the state still has adequate programs in place to address.

2) I'll defer to the technical experts (EPA) to assess if OR's current pesticide program is sufficient for addressing that condition. However, looking at the conditional approval doc, the main issue we were concerned with for pesticide use in forestry was adequate buffers for herbicide spraying around type N streams. The conditional approval doc states:

"Forest practice rules in effect at the time the Oregon 6217 program was submitted for approval did not require buffers for aerial application of herbicides or fertilizers for type N (non-fishbearing) streams. Such streams comprise significant portions of total stream length in the coastal zone. In January 1997, the ODF revised its rules governing application of chemicals. The new rules require a 60 foot buffer on type N streams for direct aerial application of fungicides and nonbiological insecticides except as approved by the State forester. The rules do not contain restrictions for aerial application of herbicides, which would appear to leave type N streams still at risk."

Flipping quickly through OR's Water Quality Pesticide Mngt Plan, I didn't see anything that jumped out at me about increasing buffer widths other than in the very general sense that where it was found to be a problem, the state would consider additional buffers. However, if EPA did approve, clearly part of your agency thought it was adequate so perhaps it is good enough when combined with other improvements since conditional approval? Again, I leave that for the EPA folks to decide.

To respond to your question about whether new information requires EPA/NOAA to revisit interim approvals, the answer would be yes. I touched on some of these issues in my response to Q1 above but have also appended an excerpt of a response we prepared for the Coastal States Organization recently regarding what "interim approval" means and how NOAA and EPA must work with the state to make sure the rationales for programmatic and legally defensible when we go out for public comment.

Hope that clarifies things but if you have additional questions, please let me know. The fed partners should touch base soon to begin preparing our response to ODEQ that is due Dec. Jayne, I know you have a call scheduled with a larger fed group to prep for our next check in call with the state but perhaps a smaller group of us should touch base before hand to get things moving on the TMDL response?

Allison

On Tue, Sep 18, 2012 at 11:37 AM, David Powers <Powers.David@epamail.epa.gov> wrote:

Allison and Don - I need to circle back with DEQ on their questions below. I'm certain that pesticides are not mentioned in the NWEA settlement agreement. That never came up in either an ag or forestry context, even in discussions let alone the agreement.

You two have far more CZARA experience and history than I do...before I get back to DEQ I'd like to pick your brains. Jenny and Jayne are key R10 folks for OR CZARA so I've included them too.

I don't know the answer to Gene's last two questions for sure. The NOAA/EPA decisions relevant to those two questions were made before I was involved in OR CZARA issues. I haven't read

through the comprehensive correspondence that you two compiled in anticipation of our agencies making a final decision so apologize in advance if Gene's questions are clearly answered already.

I thought that I remembered seeing pesticides as a management measure concern for forestry when I looked through the official file boxes for OR CZARA in Seattle a couple of years ago. I don't remember what the letter said or what we based interim approval on regarding pesticides. I was primarily looking at forestry related text for landslides, riparian protection, and roads. I don't remember seeing anything about pesticides and agriculture. For our interim approval did we rely on a court injunction and mandatory buffers, or some other State pesticide program, for either forestry or ag? If those buffers go away does that affect our interim approval?

An even broader question relates to the nature of interim approvals and whether new information, such as pesticide impacts to WQS/beneficial uses (e.g., salmonid spawning and rearing), requires NOAA and EPA to revisit interim approvals when a final decision on the adequacy of the State's CNPCP is made. I've been assuming we wouldn't be revisiting interim decisions but we would be providing our updated rationale for all of the conditional CNPCP categories at the final approval stage (like we did for WA's CNPCP).

A last question is whether there are nuances associated with additional management measures vs. management measures when it comes to final approval.

Dave

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----- Forwarded by David Powers/R10/USEPA/US on 09/18/2012 07:53 AM -----

From: YON Donald R <YON.Donald@deq.state.or.us>
To: David Powers/R10/USEPA/US@EPA
Cc: YON Donald R <YON.Donald@deq.state.or.us>
Date: 09/17/2012 05:08 PM
Subject: FW: Revised OREGON CZARA PROGRAM RESPONSE TO NWEA'S PESTICIDE PETITION

Dave, hope all is well. I am in tomorrow, are you? I would like to talk with you about Gene's questions and CZARA approval in general. Don

From: FOSTER Eugene P
Sent: Monday, September 17, 2012 4:06 PM
To: YON Donald R; MASTERSON Kevin
Cc: FOSTER Eugene P
Subject: RE: Revised OREGON CZARA PROGRAM RESPONSE TO NWEA'S PESTICIDE PETITION

Thanks Don and Kevin

Pesticides were not in our 2010 letter agreements with EPA & NOAA for Forestry Additional Management Measures.

Don - did you check the settlement agreement between EPA, NOAA, and NWEA if pesticides were in the settlement agreement?

However, the question remains, do we have interim approval for pesticides for Forestry? Don - is there a way you can follow up on this with Dave Powers at EPA?

And would our current pesticide program be sufficient for interim approval?

thanks
Gene

From: YON Donald R
Sent: Monday, September 17, 2012 3:49 PM
To: MASTERSON Kevin; FOSTER Eugene P
Cc: YON Donald R
Subject: Revised OREGON CZARA PROGRAM RESPONSE TO NWEA'S PESTICIDE PETITION
Kevin, thanks for the insert language.

Gene, attached is the revised OREGON CZARA PROGRAM RESPONSE TO NWEA'S PESTICIDE PETITION that includes your edits, responses to your comments, and Kevin's language.

Don

From: MASTERSON Kevin
Sent: Monday, September 17, 2012 3:17 PM
To: YON Donald R
Subject: RE: Request for Help on NWEA Pesticide

Don,

In his comments and questions, Gene is referring to the Water Quality Pesticide Management Plan and inter-agency team that developed and is implementing that plan. Although the plan was not developed in response to CZARA requirements or the NOAA BiOps, it directly addresses protecting water quality from impacts from pesticide use. Here's the link to the plan:

<http://www.oregon.gov/ODA/PEST/docs/pdf/wqpmtmpmp.pdf>

The language I would suggest is as follows:

"The Oregon Departments of Agriculture, Environmental Quality and Forestry and the Oregon Health Authority formed a team in 2007 to address pesticide water issues. One of this team's primary tasks is to develop and implement an inter-agency Water Quality Pesticide Management Plan to guide statewide and watershed-level actions intended to protect surface and groundwater from potential impacts of current use pesticides. As part of its cooperative agreement with EPA Region 10 Office of Pesticides, the Oregon Department of Agriculture (ODA) submitted this plan to EPA for review and approval. EPA Region 10 approved Oregon's Water Quality Pesticide Management Plan in 2011. This plan focuses on the use of water monitoring data as the driver for management actions. A continuum of management responses is outlined in the plan based on the monitoring data, with an emphasis on collaborative solutions in the short-run to address areas of concern highlighted by the data. Regulatory actions are to be implemented, using existing agency authorities, if these water quality concerns are not resolved through collaborative efforts. The primary mechanism for addressing pesticide water quality issues at the watershed-level is the Pesticide Stewardship Partnership (PSP) Program. As part of this program, DEQ works with state and local partners to collect and analyze water samples, with the data used to focus technical assistance and best practices on

the streams and pesticides that pose potential aquatic life or human health impacts. The monitoring continues over time to determine if water quality improvements have been achieved. Even with limited resources, the PSP approach has demonstrated its effectiveness in reducing water concentrations of organophosphate insecticides in certain watersheds.”

Let me know if you have questions or need more information. I’m not familiar with the CZARA comments by EPA and NOAA regarding pesticides, so I’m not exactly sure how to tailor the wording to address their comments in the most direct manner.

Kevin

From: YON Donald R
Sent: Monday, September 17, 2012 9:51 AM
To: MASTERSON Kevin
Cc: FOSTER Eugene P; YON Donald R
Subject: Request for Help on NWEA Pesticide

Kevin, could I get a few minutes of your time today to have your help in answering Gene’s questions/comments on the attached **OREGON CZARA PROGRAM RESPONSE TO NWEA’S PESTICIDE PETITION?**

I need to get the attached in final form to Gene by close of business day. Don

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(See attached file: Excerpt from CSO Response Interim Approvals.doc)